

S. AMANDA MARSHALL, OSB #953473  
United States Attorney  
District of Oregon  
DOUGLAS W. FONG, OSB #842195  
Assistant United States Attorney  
310 West Sixth Street  
Medford, OR 97501-2711  
(541) 776-3564

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

|                          |   |                                |
|--------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA | ) |                                |
|                          | ) | 1:12-po-00001-PA               |
| Plaintiff,               | ) |                                |
|                          | ) | <b>GOVERNMENT'S SENTENCING</b> |
| v.                       | ) | <b>MEMORANDUM</b>              |
|                          | ) |                                |
| DAVID DUANE EVERIST,     | ) |                                |
|                          | ) |                                |
| Defendant.               | ) |                                |
| _____                    | ) |                                |

**INTRODUCTION**

Defendant was convicted by the court of the following:

- 1. Occupying or Using a Residence on National Forest Lands Without Authorization,** in violation of 36 C.F.R. § 261.10(b)
- 2. Using or occupying National Forest System lands Without an Approved Operating Plan,** in violation of 36 C.F.R. § 261.10(p).
- 3. Cutting or Damaging Timber or Trees Without Authorization,** in violation of 36 C.F.R. § 261.6.

The maximum penalty for each count is 6 months imprisonment and a \$500 fine. 36 C.F.R. § 261.1b. Defendant also has two previous convictions for similar offenses at the same mining claim.

In **1:09-mj-04012-CL**, defendant was charged with Leaving Refuse or Debris at the same mining claim. On June 24, 2009, he was convicted and assessed a \$50 fine. Defendant's motion to dismiss on the grounds that the Forest Service had no jurisdiction over his mining claim was denied and affirmed on appeal.

In **09-cr-00479-MO**, defendant was charged and convicted of Unlawfully Occupying or Using a Residence on National Forest Lands, 36 C.F.R. § 261.10(b), occurring from November 2008 to November 2009. He was sentenced on September 27, 2010 to one year probation, a \$750 fine, with \$650 waived if defendant complied with his probation conditions, which included:

The defendant is prohibited from mining activity on Forest Service Land for one (1) year. The defendant can mine on BLM Land, but cannot mine with residency or occupy for a period of one (1) year. The defendant must provide prior notice to the BLM before mining on their land for one (1) year.

Defendant's motion to dismiss on the grounds that the Forest Service had no jurisdiction over his mining claim was denied and affirmed on appeal.

Defendant was also given an opportunity by the court and the government to remove his possessions from the mining claim. Defendant failed to remove his trailers, which necessitated the Forest Service removing them at a cost of \$1250 on September 27, 2012. (See Attachment A.) To date, the Forest Service continues to incur storage fees of approximately \$80.00 per day.

As this is defendant's third conviction for unlawful activities of public lands, the government recommends that the court sentence defendant to 3 years' probation with the following conditions:

1. Defendant shall serve 30 days jail.
2. The defendant shall pay a \$1000.00 fine, due immediately in full. \$800.00 of the fine will be suspended if the defendant complies with the conditions of supervision.
3. The defendant shall not commit any new federal, state, or local crimes.

4. The defendant shall not possess a controlled substance.
5. The defendant shall notify the Court of any material change in his economic circumstances that might affect his ability to pay his fine, restitution, and assessment.
6. The defendant is prohibited from residing, occupying, or conducting any mining activity on Forest Service or BLM lands for 3 years.
7. The defendant shall pay restitution of \$1250.00 to the U.S. Forest Service for the cost of removing his trailers from public lands, as well as \$800 in storage fees.

Finally, the government requests that the court authorize disposal of defendant's two trailers if defendant does not take possession of them from the Dick's Towing impound lot within 10 days of the sentencing date.

Dated this 10<sup>th</sup> day of October, 2012.

Respectfully submitted,  
S. AMANDA MARSHALL  
United States Attorney

/s/ Douglas W. Fong  
DOUGLAS W. FONG  
Assistant United States Attorney

(541) 772-4040  
MAILING ADDRESS  
P.O. BOX 1025  
MEDFORD, OR 97501



# DICK'S WRECKER SERVICE

ASHLAND • MEDFORD  
PUC #39806 ICC #MC124462  
FED. ID #93-0977612

174765

DATE  
27 Sept 12

|  |  |  |  |   |  |   |  |                              |  |
|--|--|--|--|---|--|---|--|------------------------------|--|
| NAME<br>Houin  |  | PHONE<br>541-471-6727  |  | NAME<br>U.S. Dept. of Agriculture (341) 6182153 |  | (BILL TO)   |  | PHONE<br>SA Michael Gardiner |  |
| ADDRESS<br>541-471-6727  |  | ADDRESS<br>SA Michael Gardiner   |  | CITY  |  | STATE   |  | ZIP                          |  |
| CITY<br>FAY  |  | STATE<br>541-471-6512  |  | CITY  |  | STATE   |  | ZIP                          |  |
| LOCATION<br>Thompson Ck Rd x 102nd Rd  |  | R.O. #   |  | MLS TO<br>37                                    |  | P.O. #  |  | T CODE<br>11                 |  |
| TOWED TO<br>Yard   |  | EXTERIOR DAMAGE  |  | MLS TOWED<br>37                                 |  | TIME OUT  |  | TRUCK #<br>331007            |  |
| YEAR   |  | MAKE   |  | MODEL<br>Sub Travel Trailer                     |  | COLOR<br>Yellow   |  | DRIVER<br>New EB             |  |
| LICENSE  |  | STATE  |  | REASON FOR TOW OR SVC                           |  | TIME IN   |  | DRIVER                       |  |
| VIN<br>Blue/White Truck Camper   |  | CONDITION  |  | FRONT TOW<br>REAR TOW<br>SLIDE                  |  | CHARGES   |  | TIME                         |  |
| REMARKS:<br>Charge Code 0610-N FMG 10-12   |  | <input type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> WRECKED <input type="checkbox"/> STRIPPED <input type="checkbox"/> BURNED |  | MILEAGE   |  | SPECIAL EQUIPMENT   |  | DOLLY                        |  |
| REMOVED PERSONALS  |  | DATE   |  | RECOVERY  |  | PAID OUT  |  | OTHER/FUEL SURCHARGE         |  |
| CALLED BY<br>USDA  |  | INS. CO.   |  | DATE RELEASED                                   |  | RELEASED TO   |  | TOTAL<br>1250.00             |  |
| <p>The undersigned agree, jointly and severally, to pay DICK'S WRECKER SERVICE within 30 days from the date of service, the amount set forth above for the services described above. Interest at the rate of 18% per annum from the date shall also be paid. The undersigned further agree and understand that DICK'S WRECKER SERVICE may forward this account to their attorneys or agent for collection upon the expiration of said 30 days and in that event the undersigned, jointly and severally, agree to pay a late payment service charge of \$15.00, plus a reasonable attorney's fee to be fixed by the court in case suit or action is instituted to collect the whole or part of such amount, plus attorney's fees necessitated by appeals from a decision of a lower court. The undersigned agrees that DICK'S WRECKER SERVICE shall not be held liable for damage to the above described vehicle or equipment occurring during the removal or transport caused by the position, location, or condition of the vehicle. DICK'S WRECKER SERVICE will be held harmless by the undersigned from all claims of any nature arising from the storage or removal of the vehicle from any location, public or private.</p> <p>I have authorized towing of my vehicle and hereby authorize my insurance company to pay DICK'S WRECKER SERVICE for the above service. If my insurance company's check or draft is jointly payable, I authorize DICK'S WRECKER SERVICE to endorse it on my behalf.</p> <p>Signature and/or insured's authorization to pay account X</p> |  | CASH   |  | RETOW TO:                                       |  | DATE  |  |                              |  |
|  |  | CHECK #  |  | STORAGE AT:                                     |  | INSIDE <input type="checkbox"/><br>OUTSIDE <input type="checkbox"/> |  |                              |  |
|  |  | CREDIT CARD  |  | CHARGE  |  | TOTAL   |  |                              |  |
|  |  |  |  |   |  |   |  |                              |  |